

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE MONTGOMERY,
Plaintiff,
v.
M. CULUM, et al.,
Defendants.

No. 2:22-cv-1156 DC CSK P

ORDER AND FINDINGS AND
RECOMMENDATIONS

I. INTRODUCTION

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that this action is barred under the favorable termination doctrine in Heck v. Humphrey, 512 U.S. 477 (1994). (ECF No. 43). Defendants' motion to dismiss is fully briefed. (ECF Nos. 43, 50, 51.) Also pending is plaintiff's motion for an extension of time to file an opposition to the motion to dismiss. (ECF No. 49.)

For the following reasons, plaintiff's motion for an extension of time is granted. For the following reasons, this Court recommends that defendants' motion to dismiss be granted as to plaintiff's claim alleging that defendant Culum used excessive force when he yanked plaintiff out of the holding cage, swung plaintiff 180 degrees, slammed plaintiff into the wall and smashed his heel down on plaintiff's foot; defendants' motion to dismiss should be denied in all other

1 respects.

2 In the motion to dismiss, defendants state that records indicate that plaintiff's legal name
3 is Dwayne Montgomery. (ECF No. 43 at 1 n. 1.) In his pleadings, plaintiff identifies himself as
4 Dwayne Montgomery. The caption of the instant action will continue to identify plaintiff as
5 Dwayne Montgomery. Several of the records referred to by defendants identify plaintiff as
6 Dwayne Montgomery. To the extent this Court cites these records, this Court will refer to the
7 spelling of plaintiff's last name contained in these records.

8 **II. PLAINTIFF'S MOTION FOR EXTENSION OF TIME**

9 On January 21, 2025, plaintiff filed a motion for extension of time to file his opposition to
10 defendants' motion to dismiss. (ECF No. 49.) After reviewing plaintiff's motion, this Court
11 finds good cause to grant plaintiff's motion for extension of time. Plaintiff subsequently filed an
12 opposition, and defendants filed a reply to this opposition. (ECF Nos. 50, 51.) The Court has
13 reviewed plaintiff's opposition and defendants' reply.

14 **III. LEGAL STANDARD FOR MOTION TO DISMISS**

15 Rule 12(b)(6) of the Federal Rules of Civil Procedures provides for motions to dismiss for
16 "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In
17 considering a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true the
18 allegations of the complaint in question, Erickson v. Pardus, 551 U.S. 89 (2007), and construe the
19 pleading in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421
20 (1969); Meek v. County of Riverside, 183 F.3d 962, 965 (9th Cir. 1999). Still, to survive
21 dismissal for failure to state a claim, a pro se complaint must contain more than "naked
22 assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause of
23 action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,
24 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
25 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
26 upon which the court can grant relief must have facial plausibility. See Twombly, 550 U.S. at
27 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the
28 court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

1 Iqbal, 556 U.S. at 678. A motion to dismiss for failure to state a claim should not be granted
2 unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims
3 which would entitle him to relief. See Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984).
4 “Ordinarily, a court may look only at the face of the complaint to decide a motion to dismiss.”
5 Van Buskirk v. Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002). “[I]f a district
6 court considers evidence outside the pleadings, it must normally convert the 12(b)(6) motion into
7 a Rule 56 motion for summary judgment, and it must give the nonmoving party an opportunity to
8 respond.” United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). “A court may, however,
9 consider certain materials—documents attached to the complaint, documents incorporated by
10 reference in the complaint, or matters of judicial notice—without converting the motion to
11 dismiss into a motion for summary judgment.” Id. at 908; see also Tellabs, Inc. v. Makor Issues
12 & Rights, Ltd., 551 U.S. 308, 322 (2007) (“[C]ourts must consider the complaint in its entirety, as
13 well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss,
14 in particular, documents incorporated by reference, and matters of which a court may take judicial
15 notice.”).

16 **IV. PLAINTIFF’S CLAIMS**

17 This action proceeds on plaintiff’s amended complaint as to defendants Culum, Gamez,
18 Clay, Kelly, Pesce, Sergeant, Hurtado and Mott. (ECF No. 15.) The alleged deprivations occurred
19 at Mule Creek State Prison (“MCSP”). (Id.) In the amended complaint, plaintiff seeks money
20 damages. (Id. at 8.)

21 Plaintiff alleges that on June 1, 2020, defendant Pesce illegally confiscated clothing items
22 belonging to plaintiff. (Id. at 12.) When plaintiff asked defendant Pesce to return the property,
23 defendant Pesce responded, “You can’t have it back, next time don’t leave your shit on my
24 dayroom benches!” (Id.) Plaintiff then asked defendant Pesce for a property confiscation receipt
25 and a 602 grievance form. (Id.) Defendant Pesce refused to give plaintiff the requested forms.
26 (Id.)

27 After reaching the conclusion that any further communication with defendant Pesce would
28 be futile, plaintiff then put his hands behind his back and submitted to handcuffs. (Id. at 12-13.)

1 Defendant Pesce placed plaintiff in restraints and attempted to walk plaintiff toward his cell in
2 order to prevent plaintiff from reporting his misconduct. (Id. at 13.) Plaintiff sat down on the
3 dayroom floor and told defendants Pesce and Hurtado that he would not move until he spoke with
4 the sergeant or the watch commander. (Id.) Defendant Pesce called for additional staff
5 assistance. (Id.) Defendants Kelly and Sergeant responded to this call. (Id.)

6 Upon defendant Kelly's arrival, defendant Kelly and Pesce stepped away and had a
7 conversation. (Id.) Defendant Kelly then told plaintiff that he (plaintiff) could not talk to anyone
8 and that plaintiff needed to take it to his cell. (Id.) After plaintiff refused to go to his cell,
9 defendant Kelly said, "He spit on me, did you see that, he spit on me!" (Id.) Plaintiff began to
10 protest this lie. (Id.) Plaintiff contends that due to the presence of multiple inmates in the
11 dayroom who saw that plaintiff did not spit on defendant Kelly, defendant Kelly "abandoned this
12 ploy to falsify a fake battery charge on the plaintiff." (Id.)

13 Because defendants Kelly and Pesce attempted to set plaintiff up with false charges of
14 battery, plaintiff had an anxiety attack. (Id.) Plaintiff began shouting, "I'm having a mental
15 breakdown...I need to see a mental health clinician...I need to talk to the Sergeant right now!"
16 (Id.)

17 Defendant Kelly then took plaintiff by the left bicep and defendant Pesce took plaintiff by
18 the right bicep. (Id. at 14.) Defendants Kelly and Pesce began to drag plaintiff across the
19 dayroom floor toward his cell as defendants Sergeant, Hurtado and Mott watched. (Id. at 13-14.)
20 As defendants Kelly and Pesce dragged plaintiff, plaintiff felt a sharp pain in his shoulders and
21 back due to the aggressive way he was being handled and because plaintiff is mobility impaired.
22 (Id. at 14.) Plaintiff alleges that he had "no choice" but to swing his feet from beneath to the front
23 of his body and place his left foot on the floor. (Id.) This action caused everybody to abruptly
24 stop and defendant Pesce lost his balance, falling on top of plaintiff. (Id.)

25 Plaintiff alleges that as he fell, defendant Kelly "somehow forcefully slammed me face
26 first into the concrete floor," causing plaintiff to hit the floor hard, disorienting plaintiff. (Id.)
27 Defendants Kelly and Pesce began using wrist and finger restraint maneuvers to intentionally
28 inflict pain in plaintiff. (Id.) As defendants Kelly and Pesce restrained plaintiff, defendant Kelly

1 said, “Now it’s a battery.” (Id.)

2 Defendant Sergeant then placed plaintiff in ankle restraints. (Id.) Defendant Culum took
3 the ankle chain from defendant Sergeant. (Id.) Defendant Culum crossed plaintiff’s feet over the
4 other and forcefully drove his full body weight onto plaintiff’s ankles and buttocks as hard as he
5 could, causing severe pain to shoot through plaintiff’s ankles and feet. (Id.)

6 Shortly thereafter, defendant Clay entered the housing unit and instructed defendants
7 Culum and Gamez to escort plaintiff to the facility A program office. (Id. at 15.) Defendants
8 Culum and Gamez lifted plaintiff up from the floor and placed him in a wheelchair, then put
9 plaintiff in a holding cage. (Id.) Defendant Gamez then removed the restraints from plaintiff’s
10 wrists and ankles. (Id.) Defendant Culum then ordered plaintiff to remove his clothing. (Id.)
11 Plaintiff refused to remove his clothing because he felt anxiety and fear. (Id.) Plaintiff again
12 asked to speak to a mental health clinician. (Id.) Defendant Culum put the hand restraints back
13 on plaintiff’s wrists. (Id.)

14 Defendant Gamez told defendant Culum that she was going to retrieve some scissors.
15 (Id.) Defendant Culum told plaintiff, “If you give me any more problems, I’m gonna fuck you up
16 nigger!” (Id.) Plaintiff responded, “You ain’t gonna do shit to me.” (Id.) Defendant Culum then
17 yanked plaintiff from the holding cage, swung plaintiff 180 degrees and slammed plaintiff’s face
18 into the wall. (Id.) Defendant Culum then smashed the heel of his foot down into plaintiff’s right
19 foot, causing plaintiff pain. (Id. at 15-16.) Defendant Culum then lifted plaintiff up off of his feet
20 and slammed plaintiff to the floor. (Id. at 16.) Defendant Culum struck plaintiff in the face with
21 his fists multiple times. (Id.)

22 As defendant Culum assaulted plaintiff, defendant Gamez returned. (Id.) Defendant
23 Gamez joined in the assault by dropping her full body weight into plaintiff’s back and striking
24 plaintiff in the back and rib cage. (Id.)

25 After the assault, defendant Gamez asked defendant Culum what happened. (Id.)
26 Defendant Culum said that plaintiff attempted to strike him. (Id.) Defendant Gamez reminded
27 defendant Culum that plaintiff was still handcuffed behind his back. (Id.) Defendant Culum then
28 revised his statement, stating that plaintiff struck him in the chest with his shoulder. (Id.)

1 After plaintiff was returned to the holding cage, plaintiff told defendant Clay that the
2 handcuffs on his wrists were too tight and that plaintiff was losing feeling in both of his wrists.
3 (Id.) Defendant Clay ignored plaintiff's request to loosen the handcuffs. (Id.)

4 After begging to see a mental health clinician, plaintiff was finally able to speak to a
5 psychiatrist. (Id.) After consulting with defendant Clay, the psychiatrist left without saying
6 anything. (Id. at 17.)

7 The Court ordered service of the following claims raised in the amended complaint: 1) on
8 June 1, 2020, defendants Culum, Gamez and Clay used excessive force in violation of the Eighth
9 Amendment when they allegedly applied handcuffs tightly and disregarded plaintiff's request to
10 loosen the handcuffs; 2) on June 1, 2020, defendants Kelly and Pesce used excessive force in
11 violation of the Eighth Amendment when they allegedly attempted to drag plaintiff to his cell;
12 3) on June 1, 2020, defendant Kelly used excessive force in violation of the Eighth Amendment
13 when he allegedly slammed plaintiff's face into the concrete; 4) on June 1, 2020, defendants
14 Kelly and Pesce used excessive force in violation of the Eighth Amendment when they allegedly
15 used finger and wrist restraint maneuvers to intentionally inflict pain on plaintiff; 5) on June 1,
16 2020, defendant Culum used excessive force in violation of the Eighth Amendment when he
17 allegedly drove his full body weight down onto plaintiff's ankles and buttocks as hard as he
18 could, causing plaintiff to suffer severe pain; 6) on June 1, 2020, defendants Culum and Gamez
19 used excessive force in violation of the Eighth Amendment when they allegedly assaulted
20 plaintiff; and 7) on June 1, 2020, defendants Pesce, Kelly, Sergeant, Hurtado and Mott violated
21 plaintiff's Eighth Amendment right to adequate mental health care when they allegedly failed to
22 provide plaintiff with mental health treatment. (ECF No. 18 at 1-2.)

23 **V. DEFENDANTS' MOTION TO DISMISS**

24 **A. Legal Standard**

25 "[A] state prisoner's claim for damages is not cognizable under 42 U.S.C. § 1983 if 'a
26 judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or
27 sentence,' unless the prisoner can demonstrate that the conviction or sentence has previously been
28 invalidated." Edwards v. Balisok, 520 U.S. 641, 643 (1997) (quoting Heck, 512 U.S. at 487). In

1 Edwards, the Supreme Court applied Heck to prison disciplinary proceedings. See id. “[I]f the
 2 district court determines that the plaintiff’s action, even if successful, will *not* demonstrate the
 3 invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed
 4 to proceed.” Heck, 512 U.S. at 487. (emphasis in original). “In evaluating whether claims are
 5 barred by Heck, an important touchstone is whether a § 1983 plaintiff could prevail only by
 6 negating ‘an element of the offense of which he has been convicted.’” Cunningham v. Gates, 312
 7 F.3d 1148, 1153-54 (9th Cir. 2002) (quoting Heck, 512 U.S. at 487 n.6).

8 “To decide whether success on a section 1983 claim would *necessarily* imply the
 9 invalidity of a conviction, [the court] must determine which acts formed the basis for the
 10 conviction.” Lemos v. County of Sonoma, 40 F.4th 1002, 1006 (9th Cir. 2022) (emphasis in
 11 original). “When the conviction is based on a guilty plea, we look at the record to see which acts
 12 formed the basis for the plea.” Lemos, 40 F.4th at 1006 (citations omitted). It is the defendants’
 13 burden to establish the basis for the conviction. See Sanford v. Motts, 258 F.3d 1117, 1119 (9th
 14 Cir. 2001) (“It was the burden of the defendants to establish their defense by showing what the
 15 basis was.”). The Ninth Circuit has applied Heck to no contest pleas. See Sanders v. City of
 16 Pittsburg, 14 F.4th 968, 970-72 (9th Cir. 2021).

17 To determine the factual basis of a plea, for Heck purposes, the court looks at the record to
 18 see which acts formed the basis for the plea. See Smith v. City of Hemet, 394 F.3d 689, 698 (9th
 19 Cir. 2005) (en banc). However, if the record is silent as to the factual basis for the plea,
 20 defendants will be unable to establish their defense, and plaintiff’s § 1983 action will not be Heck
 21 barred. See Martell v. Cole, 115 F.4th 1233, 1239 (9th Cir. 2024) (claim of excessive force was
 22 not barred under Heck because the record was “silent about which one (or more) of [plaintiff’s]
 23 resisting or obstructing acts was (or were) the factual predicate of his guilty plea.”).

24 **B. Requests for Judicial Notice**

25 1. Defendants’ Request for Judicial Notice

26 In the motion to dismiss, defendants request that the Court take judicial notice of several
 27 documents. A court may “judicially notice a fact that is not subject to reasonable dispute because
 28 it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately

1 and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.
2 Evid. 201(b). The court may also take judicial notice of matters of public record. See Lee v. City
3 of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001), abrogated on other grounds as stated in
4 Galbraith v. Cty. of Santa Clara, 307 F.3d 1119 (9th Cir. 2002). When a court takes judicial
5 notice of a document, “it may do so not for the truth of the facts recited therein, but for the
6 existence of the [record], which is not subject to reasonable dispute over its authenticity.” Lee,
7 250 F.3d at 690 (internal quotation marks and citation omitted).

8 Defendants request that the Court take judicial notice of seven documents filed in Amador
9 County Superior Court case People v. Montgomery, No. 20-CR-29878: 1) the docket (exhibit A-
10 1); 2) the felony complaint (exhibit A-2); 3) the certified reporter’s transcript from the
11 preliminary hearing (exhibit A-3); 4) the information (exhibit A-4); 5) the felony plea form
12 (exhibit A-5); 6) the plea and sentencing minutes (exhibit A-6); and 7) the abstract of judgment
13 (exhibit A-7). (ECF No. 43-2 at 3-4.) This Court takes judicial notice of these seven documents.
14 See Lininger v. Pfleger, 2017 WL 5128170, at *1 n.1 (N.D. Cal. Nov. 6, 2017) (“The documents
15 submitted for judicial notice are documents filed in Plaintiff’s state court criminal proceedings,
16 which are suitable for judicial notice under Fed. R. Evid. 201(b).”); Arellano v. Haskins, 2021
17 WL 1193814, at *6 (E.D. Cal. Mar. 30, 2021) (taking judicial notice of state court criminal
18 docket, certified copy of preliminary hearing transcript and transcript from change of plea
19 hearing).

20 Defendants also request that the Court take judicial notice of records from two California
21 Department of Corrections and Rehabilitation (“CDCR”) Rules Violation Report Logs, nos.
22 7003864 and 7003865 (exhibits B-1 and B-2). (ECF No. 43-2 at 4.) Plaintiff objects to the
23 request for judicial notice of the records from these rules violation reports on the grounds that the
24 factfinders at these disciplinary hearings were biased and one-sided. (ECF No. 50-2 at 2.)
25 Plaintiff alleges that he was denied due process during these disciplinary proceedings in that he
26 did not receive a thorough investigation. (Id.)

27 Federal courts recognize that rules violation reports fall within the category of public
28 records subject to judicial notice. See Daniels v. Valencia, 2018 WL 3640321, at *3 (E.D. Cal.

1 July 30, 2018), findings and recommendations adopted, 2018 WL 4636186 (E.D. Cal. Sep. 26,
2 2018). Taking judicial notice of a rules violation report does not mean that the factual allegations
3 of the rules violation report are deemed to be true. See id. “To the contrary, a court cannot
4 generally take judicial notice of the underlying ‘factual findings of proceedings or records in
5 another cause so as to supply, without formal introduction of evidence, facts essential to support a
6 contention in a cause then before it.’” Id. (quoting M/V Am. Queen v. San Diego Marine Constr.
7 Corp., 708 F.3d 1483, 1491 (9th Cir. 1983)). Accordingly, this Court may take judicial notice of
8 the rules violation reports attached to the motion to dismiss, subject to the limitations noted
9 above.

10 Finally, defendants request that the Court take judicial notice of the docket from Los
11 Angeles County Superior Court case People v. Montgomery, No. PA036573 (exhibit C-1).
12 (ECF No. 43-2 at 4.) This Court takes judicial notice of the docket from Los Angeles County
13 Superior Court case People v. Montgomery, No. PA036573. See Lininger, 2017 WL 5128170,
14 at *1 n.1.

15 2. Plaintiff’s Request for Judicial Notice

16 In his opposition, plaintiff requests that the Court take judicial notice of various
17 documents identified as: 1) plaintiff’s appeal nos. 969 and 17145, including all documents
18 submitted and considered by prison officials in responding to these grievances; 2) the office of
19 appeals finding that granted plaintiff’s staff misconduct complaint; 3) all appeal data that relate to
20 plaintiff’s opposition; and 4) documents related to the internal investigation attached as plaintiff’s
21 exhibit 7. (ECF No. 50-2 at 1-3.) The documents to which plaintiff refers in his request for
22 judicial notice are attached as exhibits to his opposition. (ECF No. 50-1 at 15-80.)

23 After reviewing the documents for which plaintiff seeks judicial notice, this Court finds
24 that none of these documents are relevant to the pending motion. In the pending motion,
25 defendants argue that the instant action is barred pursuant to Heck based on plaintiff’s criminal
26 conviction in Amador County Superior Court case People v. Montgomery, No. 20-CR-29878
27 and plaintiff’s prison disciplinary convictions in rules violation report nos. 7003864 and 7003865.
28 None of the documents plaintiff requests be judicially noticed demonstrate that any of these

1 convictions have been invalidated. Judicial notice is inappropriate where, as here, the facts to be
2 noticed are not relevant to the disposition of the issues before the Court. See Ruiz v. City of
3 Santa Maria, 160 F.3d 543, 548 n. 13 (9th Cir. 1998). Accordingly, plaintiff's request for judicial
4 notice is denied.

5 This Court observes that plaintiff seeks judicial notice of a CDCR Appeal Claims
6 Decision Response in grievance no. 969 dated September 13, 2020. (ECF No. 50-1 at 33.) In this
7 grievance, plaintiff claimed that defendants Culum and Gamez assaulted plaintiff on June 1,
8 2020. (Id.) Plaintiff claimed that defendant Culum threatened plaintiff using vulgar language and
9 that plaintiff responded, resulting in defendant Culum slamming plaintiff into the wall. (Id.)
10 Plaintiff claimed that defendants Culum and Gamez battered plaintiff while plaintiff was in
11 restraints and then fabricated the statement that plaintiff "took a swing at me." (Id.) The
12 institution level response to grievance no. 969 found that staff did not violate policy as to the
13 allegations/claims. (Id.) The CDCR Appeals Claim Decision Response states that the examiner
14 reviewed the above documents and was unable to support the institution's conclusion that staff
15 did not violate policy. (Id.) The CDCR Appeals Claim Decision Response found that a remedy
16 was warranted and directed the institution to take appropriate action to address all issues
17 adequately that staff used excessive force as alleged by plaintiff. (Id.) The CDCR Appeals Claim
18 Decision Response directed the institution to review the allegation of the threat involving profane
19 language and the allegation of fabricating statements during the emergency code announcement.
20 (Id.)

21 Plaintiff also seeks judicial notice of the institution level response to the CDCR Appeals
22 Claim Decision Response to grievance no. 969. (Id. at 36-37.) This response dated November 2,
23 2020 states, in relevant part, "For the allegation of verbal threats, it happened in an isolated area
24 and no additional staff or inmate were identified for interviews. For the allegations of fabricated
25 statements, witnesses were interviewed and no policy violations were discovered. For the
26 allegation of misuse of force no policy violations were discovered." (Id. at 36.) Plaintiff's
27 handwritten note on this document claims that the institution did not thoroughly investigate his
28 claims. (Id. at 37.)

1 This Court observes that the CDCR Appeals Claim Decision Response and the institution
2 level response to the CDCR Appeals Claim Decision Response to grievance no. 969 do not
3 demonstrate that plaintiff's conviction for the rules violation related to this grievance, i.e., rules
4 violation report No. 7003864, has been invalidated.

5 **C. Background**

6 In the motion to dismiss, defendants argue that a finding in plaintiff's favor would
7 necessarily undermine the validity of plaintiff's rules violation convictions, nos. 7003864 and
8 7003865, and plaintiff's conviction in Amador County Superior Court case People v.
9 Montgomery, No. 20-CR-29878. To put this argument in context, this Court next sets forth the
10 background of plaintiff's state court and rules violation convictions.

11 1. Case No. 20-CR-29878

12 On August 21, 2020, the Amador County District Attorney charged plaintiff with two
13 counts of battery on a non-confined person by a prisoner in violation of California Penal Code
14 section 4501.5. (Def. Exhibit A-2.) Count 1 alleged that on June 1, 2020, plaintiff battered
15 defendant Pesce. (Id.) Count 2 alleged that on June 1, 2020, plaintiff battered defendant Culum.
16 (Id.) Plaintiff was also charged with two strike enhancements. (Id.) On August 16, 2024,
17 plaintiff pleaded no contest to Count 1 in exchange for dismissing Count 2 and the strike
18 enhancements. (Def. Exhibit A-5.) The Amador County Superior Court sentenced plaintiff to
19 two years for Count 1, to be served consecutively to his underlying offense in Los Angeles
20 County case no. PA036573. (Def. Exhibits A-5, A-6.)

21 On November 1, 2000, in Los Angeles County case no. PA036573, plaintiff was found
22 guilty of one count of robbery, in violation of California Penal Code section 211, and one count
23 of petty theft with a prior, in violation of California Penal Code section 666. (Def. Exhibit C-1.)
24 Plaintiff was sentenced to 40 years to life. (Id.)

25 On the plea form signed by plaintiff in Amador County case No. 20-CR-29878, plaintiff
26 initialed the following statement:

27 I understand that the court is required to find a factual basis for my
28 plea to make sure that I am entering a plea to the proper offenses
under the facts of the case. I offer to the court the following as the

1 basis for my plea of no contest and any admissions:

2 (1) I understand that the court may consider the following as proof
3 of the factual basis for my plea:

4 (a) Preliminary Hearing Transcript.

5 (Def. Exhibit A-5 at 4.)

6 Plaintiff also initialed the section of the plea form stating that his attorney would stipulate
7 to a factual basis for the plea. (Id. at 5.) Plaintiff's attorney stipulated "that there is a factual
8 basis for the plea," and referred the court to the preliminary hearing transcript. (Id. at 6.)

9 This Court next summarizes the testimony from the preliminary hearing transcript. This
10 Court refers to the page numbers from the preliminary hearing transcript, which begin at page
11 147. (Def. Exhibit A-3 at p. 147.) Defendants Pesce and Culum were the only witnesses to
12 testify at the preliminary hearing.

13 Defendant Pesce testified that on June 1, 2020, he observed plaintiff pacing around the
14 dayroom yelling that plaintiff was having a mental breakdown. (Id. at p. 149.) Plaintiff seemed
15 to be in a state of panic almost. (Id.) Defendant Pesce placed plaintiff in mechanical restraints
16 "to get him some mental health." (Id.) After placing plaintiff in mechanical restraints, defendant
17 Pesce called for an escort out of building two so that plaintiff could be escorted to the program
18 office. (Id. at 150.) Once the escorting officer arrived and began escorting plaintiff to the sally
19 port, plaintiff was still being very erratic. (Id.) Plaintiff said, "If you are going to use force on
20 me, do it, do it." (Id.) Defendant Pesce told plaintiff to stop striking and kicking defendant
21 Pesce. (Id.) Plaintiff stopped the escort, kicked back with his right foot and struck defendant
22 Pesce on his left knee. (Id.) Defendant Pesce then fell, maintaining possession of plaintiff's right
23 arm. (Id.) Defendant Pesce fell as a result of being struck by plaintiff. (Id.) As soon as
24 defendant Pesce and plaintiff fell, responding staff grabbed plaintiff's legs and put plaintiff in leg
25 restraints. (Id.) Defendant Pesce then left and went to get a medical evaluation done on his left
26 knee due to the trauma. (Id.) When plaintiff fell to the ground, plaintiff was compliant and not
27 resisting. (Id. at 159.) Defendant Pesce testified that defendants Kelly, Sargent, Culum and
28 Gamez were present. (Id. at 151.) Defendants Gamez and Culum escorted plaintiff away in a

1 wheelchair. (Id. at 161.)

2 Defendant Culum testified at the preliminary hearing that on June 1, 2020, defendant
3 Culum responded to a code one, resistive inmate, building two. (Id. at 165-66.) When defendant
4 Culum arrived, he observed an inmate in restraints on the floor. (Id. at 166.) Defendant Culum
5 did not see any force being used. (Id.) Plaintiff was not resisting. (Id.) Several officers were
6 around plaintiff. (Id.) Defendant Culum walked over to plaintiff to assist another officer place
7 ankle restraints on plaintiff. (Id. at 166-67.) Defendant Culum held plaintiff's ankles up. (Id.)
8 After that a wheelchair arrived, and defendant Culum assisted plaintiff into the wheelchair with
9 defendant Gamez. (Id.) Defendants Culum and Gamez then escorted plaintiff to the alpha
10 program office. (Id. at 167.) On the way to the office, plaintiff did not speak. (Id.) When they
11 arrived at the office, defendant Culum conducted a search of the holding cell. (Id.) Defendants
12 Culum and Gamez then brought plaintiff to his feet and placed him in the holding cell. (Id.)
13 Defendant Culum testified that plaintiff went into the holding cell on his own free will: "We
14 assisted him. To the best of my knowledge, he stood up on his own and walked into the cell."
15 (Id. at 173.) Defendant Gamez then removed plaintiff's ankle restraints and handcuffs. (Id.) At
16 this time, plaintiff was facing away from defendant Culum. (Id. at 167.) Defendant Culum then
17 instructed plaintiff to remove his clothes so that defendants could perform an unclothed body
18 search. (Id. at 167-68.) Plaintiff refused to remove his clothes. (Id. at 168.) Defendant Culum
19 then put the handcuffs back on plaintiff. (Id.) Defendant Gamez then said that she was going to
20 get the scissors, which were needed to cut plaintiff's clothes off. (Id.) Plaintiff then said, "I'll
21 make you use force." (Id.) Plaintiff spun dramatically to his right and his right shoulder hit
22 defendant Culum's chest. (Id.) Defendant Culum remembers his hand coming up, plaintiff's
23 right arm hit defendant Culum's left hand, defendant Culum's left hand was on plaintiff's upper
24 back and lower neck area, and defendant Culum forced plaintiff to the ground. (Id.) Later,
25 another officer came and put leg restraints on plaintiff. (Id. at 177-78.) An officer escorted
26 plaintiff to the program office. (Id. at 178.)

27 2. Rules Violation Report No. 7003864

28 On August 24, 2020, plaintiff was found guilty of battery on a peace officer in violation

1 of California Code of Regulations title 15, § 3005(d)(1). (Def. Exhibit at p. B-1.) The charges
2 against plaintiff in this rules violation report are based on the same incident with defendant
3 Culum for which plaintiff was charged with battery on a non-confined person in Amador County
4 case no. 20-CR-29878. At the disciplinary hearing, plaintiff made the following statement:

5 As I was placed into the Holding Cell, the ankle restraints and
6 handcuffs were removed and I was asked to strip out. I did not say,
7 "F" no. I simply said I am not strip[p]ing out. I was placed back in
8 handcuffs at which time I heard Officer Gamez say, "I am going to
9 get the scissors." After her departure, C/O Culum told me, "You give
10 me anymore problems, I'm going to fuck you up." I simply stated,
11 "You are not going to do nothing to me." Culum then snatched me
12 by my handcuffs and my shirt, pulled me out of the cage and
13 slammed me into the wall. He took his left leg and slammed his boot
14 into my right foot. Then he slammed me to the floor and drove his
15 left knee into my back and then struck me four times on the side of
16 my face with his left fist. After that he drove his right knee about
17 three or four times into the right side of my rib cage. After that
18 Officer Gamez had returned with the scissors, she drove her right
19 knee knot the middle of my back and started striking me with her
20 right fist into the left side of my rib. After they finished they called
21 for back up or assistance. He cut all my cloth[e]s off with the
22 scissors[,] covered me and put me back into the wheelchair and then
23 they took me to medical. I never struck with my shoulder, I never
24 did, I never said I will make you use force. Culum is a 40 year old
25 Caucasian guard and I am a 57 year old African American[.] I would
26 never call a white man a nigger. I wouldn't call a black man a nigger.
27 Culum stated when I drove my shoulder he fell onto the floor and
28 hurt himself but he never stated that into the incident report.

18 (Id. at 6-7.)

19 In finding plaintiff guilty, the disciplinary hearing officer cited the following section of
20 defendant Culum's report:

21 After MONTGOMERY was placed into a wheelchair Officer
22 Gamez and I escorted MONTGOMERY to Facility "A" Program
23 Office. I searched Holding Cell #2 for contraband with negative
24 results. I placed MONTGOMERY into Holding Cell # 2. Officer
25 Gamez removed the leg restraints and handcuffs. I gave
26 MONTGOMERY a direct order to submit to an unclothed body
27 search. MONTGOMERY stated "Fuck no, I ain't strippin out." I
28 secured MONTGOMERY back into handcuffs. As Officer Gamez
left to retrieve the scissors, MONTGOMERY stated "I'll make you
use force, nigga!" MONTGOMERY aggressively spun to his right,
pushing his right shoulder into my chest. I grabbed
MONTGOMERY'S right arm with my right hand and put my left
hand in the center of his back. Using my physical strength and body
weight I forced MONTGOMERY to the ground. Officer Gamez
responded and took control of MONTGOMERY'S left side."

1 (Id. at 7.)

2 The disciplinary hearing officer also cited the following section of defendant Gamez's
3 report:

4 I heard inmate MONTGOMERY yell, "I'm going to make you use
5 force!" I redirected my attention towards the holding cells and
6 observed MONTGOMERY aggressively turn to the right and strike
7 Officer M. Culum in the chest with his right shoulder. Utilizing my
8 institutional radio, I summoned a code one response. I observed
9 Officer M. Culum utilize Physical Force to place
10 MONTGOMERY on the ground. Due to my vantage point I was
11 unable to see the hand placement of Officer M. Culum.
12 MONTGOMERY started to resist by thrashing his shoulders to the
13 left and right and kicking his legs.

14 (Id.)

15 The disciplinary hearing officer also reviewed the CDCR 7219 Medical Report of Injury
16 or Unusual Occurrence on defendants Culum, Gamez and plaintiff. (Id.) The disciplinary
17 hearing officer also took into consideration plaintiff's statement made during the disciplinary
18 hearing. (Id.) This Court observes that defendant Culum's report is attached to defendants'
19 exhibit B-1. (Id. at 1.) Defendants' exhibit B-1 does not include defendant Gamez's statement or
20 the CDCR 7219 Medical Report of Injury or Unusual Occurrence forms referred to by the
21 disciplinary hearing officer. Plaintiff was assessed 150 days of credit loss after being found
22 guilty of the rules violation. (Id. at 3.)

23 3. Rules Violation Report No. 7003865

24 On August 24, 2020, plaintiff was found guilty of battery on a peace officer in violation of
25 California Code of Regulations title 15, § 3005(d)(1). (Def. Exhibit at p. B-2.) The charges
26 against plaintiff in this rules violation report are based on the same incident with defendant Pesce
27 for which plaintiff was charged with battery on a non-confined person in Amador County case no.
28 20-CR-29878.

At the disciplinary hearing, plaintiff made the following statement:

The report is inaccurate. Pesce had confiscated personal clothing
items[.] [W]hen I came out I requested for my clothing back. He
refused to return it. I then asked for a property receipt, he refused to
issue me a property receipt. I then requested to talk to the yard
sergeant, he said I couldn't talk to anybody and to take it back to my

1 cell. I refused and did not comply, I refused to take it back to my
2 cell. He placed me in handcuffs[.] [A]fter he placed me in handcuffs
3 he tried to escort me back to my cell. I refused to go and I sat down
4 in the middle of the dayroom. He called for back up. C/O Kelly and
5 C/O Sergeant responded. Kelly grabbed me by my left arm and Pesce
6 grabbed me by my right arm. They snatched me up off the floor and
7 started dragging me towards my cell. I planted my feet in front of
8 me and attempt to resist them dragging me[.] [A]s I done so Kelly
9 forcefully lifted me up and Pesce followed suit. Kelly brought me
10 down hard on my face taking me off balance. My right leg went out
11 (back) in a kicking motion causing Pesce to fall on top of me. I was
12 on the ground[.] Kelly put his right knee into my back and Pesce put
13 his right knee on top of my head and they both restrained me until
14 other officers arrived. I was placed in leg restraints and in a
15 wheelchair and escorted to the program office.

16 (Id. at 8-9.)

17 At the disciplinary hearing, the disciplinary hearing officer asked plaintiff if he stated,
18 “You’re going to have to use force on me now.” (Id. at 9.) Plaintiff denied making this
19 statement. (Id.) At the disciplinary hearing, plaintiff also called six inmate witnesses. (Id. at 6-
20 7.)

21 In finding plaintiff guilty, the disciplinary officer cited the following section of defendant
22 Pesce’s report: “Officer B. Kelly responded and grabbed MONTGOMERY’S left arm as I had
23 MONTGOMERY’S right arm. MONTGOMERY continued stating, ‘I’m having a mental
24 breakdown, you’re going to use force on me, do it, do it.’ Simultaneously, MONTGOMERY
25 stopped the escort and kicked back with his right leg striking my left knee causing me to fall
26 forward onto the ground.” (Id. at 7.) The disciplinary hearing officer also cited the following
27 section of defendant Kelly’s report: “I took Inmate MONTGOMERY’S left bicep with my right
28 hand and began to escort Inmate MONTGOMERY towards the sally port. Inmate
MONTGOMERY was shouting ‘Fuck you Kelly, I’m going to make you use force.’ Inmate
MONTGOMERY planted his left and right feet firmly on the ground and stopped the escort.
Inmate MONTGOMERY raised his right foot off the ground and kicked backwards, striking
Officer M. Pesce in his left knee.” (Id.) The disciplinary hearing officer also cited the following
section of defendant Sergeant’s report: “MONTGOMERY lifted his right leg and kicked back
striking Officer M. Pesce in the left knee area.” (Id.) The disciplinary hearing officer also cited
the following section of defendant Mott’s report: “I opened the yard door as I observed Officer B.

1 Kelly secured MONTGOMERY'S left arm as Officer Pesce secured MONTGOMERY'S
2 right arm. MONTGOMERY proceeded to yell, 'I'm not going anywhere mother fucker unless
3 you use force do it now!' As Inmate MONTGOMERY was being escorted I observed him
4 lifting his right leg kicking Officer Pesce in the left knee." (Id.) The disciplinary hearing officer
5 also reviewed the Investigative Employee's report, the CDCR 7219 Medical Report of Injury or
6 Unusual Occurrence on plaintiff and defendants Pesce and Kelly. (Id.) Plaintiff was assessed
7 150 days of credit loss. (Id.) This Court observes that defendant Pesce's report and the
8 Investigative Employee's report are attached to defendants' Exhibit B-2. (Id. at 10, 14-15.)
9 Defendants' Exhibit B-2 does not contain the other documents referred to by the disciplinary
10 hearing officer.

11 **D. Application of Heck to People v. Montgomery, No. 20-CR-29878**

12 Defendants argue that plaintiff's plea of no contest and stipulation to the facts in the
13 preliminary hearing transcript in Amador County Superior Court No. 20-CR-29878 render all of
14 plaintiff's claims Heck barred, including those claims related to dismissed count 2. Defendants
15 argue that the preliminary hearing testimony reveals that plaintiff was the true aggressor and that
16 no staff members punched plaintiff or used excessive force against him. Defendants further argue
17 that plaintiff's claim alleging that defendants denied him mental health care conflicts with the
18 stipulated facts from the preliminary hearing transcript which reveal that defendant Pesce placed
19 plaintiff in mechanical restraints in order to get plaintiff mental health care. Defendants argues
20 that plaintiff stipulated to these facts and cannot now say that defendants were deliberately
21 indifferent to his mental health needs. In the opposition, plaintiff argues that his no contest plea
22 to count 1, alleging battery on defendant Pesce, does not mean that his claims based on dismissed
23 count 2 involving defendant Culum are Heck barred.

24 As discussed above, in case No. 20-CR-29878, plaintiff pled no contest to count 1 alleging
25 battery on defendant Pesce. In the plea form, plaintiff and his counsel stipulated to the
26 preliminary hearing transcript as the factual basis for plaintiff's no contest plea to count 1. The
27 preliminary hearing transcript makes clear that plaintiff kicking defendant Pesce in the left knee
28 formed the factual basis of plaintiff's plea to the battery charged in count 1. Therefore, plaintiff

1 stipulated *only* to those facts in the preliminary hearing transcript showing that plaintiff kicked
 2 defendant Pesce in the left knee. See Lemos, 40 F.4th at 1006. For this reason, this Court does
 3 not agree with defendants’ argument that plaintiff’s stipulation to the preliminary hearing
 4 transcript as the basis for his plea to count 1 meant that plaintiff stipulated to all facts in the
 5 preliminary hearing transcript, including facts involving dismissed count 2.¹

6 Having determined the factual basis of plaintiff’s no contest plea to count 1, this Court
 7 next considers application of Heck to plaintiff’s claims. To put this discussion in context, this
 8 Court observes that a “§ 1983 claim is not barred by Heck even when the allegedly excessive
 9 force and the obstructive act that forms the basis of plaintiff’s conviction occur ‘in a single
 10 continuous chain of events lasting a very brief time.’” Martell, 115 F.4th at 1238 (quoting
 11 Hooper v. County of San Diego, 629 F.3d 1127, 1131 (9th Cir. 2011)); see also Hooper, 629 F.3d
 12 at 1129 (noting that the full encounter took place ‘in a span of 45 second’); Sanders, 14 F.4th at
 13 971 (explaining excessive force claim can survive Heck if acts constituting excessive force
 14 occurred “before or after” acts forming basis for conviction for resisting arrest, but Heck applies
 15 if excessive force and acts underlying conviction occurred “at the same time.”); Smith, 394 F.3d
 16 at 693 (excessive force claim is not barred by Heck where excessive force takes place
 17 “subsequent to the time [plaintiff] engaged in the conduct that constituted the basis for his
 18 conviction”).

19 For the following reasons, this Court finds that none of plaintiff’s claims are Heck barred
 20 based on plaintiff’s Amador County criminal conviction for battery on defendant Pesce because a

21
 22 ¹ This Court notes that in cases alleging excessive force where the plaintiff pled no contest to
 23 resisting arrest and stipulated without any restriction or limitation to the preliminary hearing
 24 transcript, courts have considered the entire preliminary hearing transcript to determine whether
 25 the excessive force claims are Heck barred. For example, in Winder v. McMahon, 345 F. Supp.
 26 3d 1197 (C.D. Cal. 2018), the “defendant was charged with a single-act offense [of resisting
 27 arrest] but there are multiple acts involved each of which could serve as the basis for a
 28 conviction...” 345 F. Supp. 3d at 1206 (internal citations omitted). “[T]his single factual
 context, all of which was presented at [a] preliminary hearing and adopted by [plaintiff] as the
 factual basis of his plea, may not be, in hindsight, subject to temporal hairsplitting [in order to
 avoid the Heck bar].” Id. at 1206-07. The instant case is different from Winder because here,
 plaintiff’s battery conviction was based on one discrete act: plaintiff kicking defendant Pesce in
 the left knee.

1 finding in plaintiff's favor as to these claims would not necessarily imply the invalidity of this
2 conviction. Plaintiff's claim that defendants Culum, Gamez and Clay used excessive force in
3 violation of the Eighth Amendment when they allegedly applied handcuffs tightly and
4 disregarded plaintiff's request to loosen the handcuffs is not Heck barred because a finding in
5 plaintiff's favor as to this claim would not necessarily imply the invalidity of plaintiff's battery
6 conviction. Plaintiff's claim that defendants Kelly and Pesce used excessive force in violation of
7 the Eighth Amendment when they allegedly attempted to drag plaintiff to his cell is not Heck
8 barred because a finding in plaintiff's favor as to this claim would not necessarily imply the
9 invalidity of plaintiff's battery conviction. A finding that defendant Kelly used excessive force in
10 violation of the Eighth Amendment when he allegedly slammed plaintiff's face into the concrete
11 is not Heck barred. Plaintiff alleges that defendant Kelly slammed plaintiff's face into the
12 concrete floor as plaintiff fell after the kicking incident on which plaintiff's conviction is based.
13 A finding that defendant Kelly slammed plaintiff's face into the floor as plaintiff fell after
14 plaintiff kicked defendant Pesce in the left knee would not necessarily imply the invalidity of
15 plaintiff's battery conviction. Plaintiff's claim that defendants Kelly and Pesce allegedly used
16 excessive force in violation of the Eighth Amendment when they used finger and wrist restraint
17 maneuvers to intentionally inflict pain on plaintiff is not Heck barred. Defendants allegedly used
18 the finger and wrist maneuvers on plaintiff after plaintiff fell to the floor after the kicking
19 incident. A finding in plaintiff's favor as to this claim would not necessarily imply the invalidity
20 of plaintiff's battery conviction. Plaintiff's claim that defendant Culum used excessive force in
21 violation of the Eighth Amendment when he allegedly drove his full body weight down onto
22 plaintiff's ankles and buttocks as hard as he could, causing plaintiff severe pain, is not Heck
23 barred because a finding in plaintiff's favor as to this claim would not necessarily imply the
24 invalidity of plaintiff's battery conviction. Plaintiff's claim that defendants Culum and Gamez
25 used excessive force in violation of the Eighth Amendment when they allegedly assaulted
26 plaintiff is not Heck barred because a finding in plaintiff's favor as to this claim would not
27 necessarily imply the invalidity of plaintiff's battery conviction. Finally, plaintiff's claim that
28 defendants Pesce, Kelly, Sergeant, Hurtado and Mott violated plaintiff's Eighth Amendment right

1 to adequate mental health care when they allegedly failed to provide mental health treatment to
2 plaintiff is not Heck barred because a finding in plaintiff's favor as to this claim would not
3 necessarily imply the invalidity of plaintiff's battery conviction. Accordingly, defendants'
4 motion to dismiss on these grounds should be denied.

5 **E. Application of Heck to Rules Violation Report No. 7003865**

6 Defendants argue that a finding in plaintiff's favor would directly negate plaintiff's
7 conviction in rules violation report no. 7003865. In rules violation report no. 7003865, plaintiff
8 was found guilty of battery on defendant Pesce based on the same facts on which plaintiff's
9 Amador County criminal conviction was based, i.e., plaintiff kicked defendant Pesce in the left
10 knee. "[A] disciplinary conviction for battery does not pose a Heck bar when the plaintiff alleges
11 "a factual scenario that would potentially allow his § 1983 claims to coexist with his prison
12 disciplinary finding." Blocker v. Solis, 2023 WL 10479566, at *5 (C.D. Cal. Dec. 18, 2023),
13 findings and recommendation adopted, 2024 WL 1257431 (C.D. Cal. Mar. 25, 2024) (quoting
14 Brown v. Holland, 2014 WL 1339687, at *4 (N.D. Cal. Mar. 28, 2014). "Such a situation exists
15 when the complaint alleges a continuous chain of events with two separate factual predicates—
16 first, acts by the prisoner leading to the rules violation and, second, acts of excessive force by the
17 officer giving rise to potential § 1983 liability." Blocker, 2023 WL 10479566, at *5. "By
18 contrast, when the disciplinary conviction and the excessive force claims are premised on
19 different versions of the same event, Heck applies." Id.

20 For the same reasons plaintiff's claims are not Heck barred by plaintiff's Amador County
21 criminal conviction, plaintiff's claims are not Heck barred by plaintiff's conviction in rules
22 violation report no. 7003865. A finding in plaintiff's favor as to his claims would not necessarily
23 imply the invalidity of plaintiff's disciplinary conviction in rules violation report no. 7003865.
24 Accordingly, defendants' motion to dismiss on these grounds should be denied.

25 **F. Application of Heck to Rules Violation Report No. 7003864**

26 Defendants argue that a finding in plaintiff's favor would directly negate plaintiff's
27 conviction in rules violation report no. 7003864. In rules violation report no. 7003864, plaintiff
28 was found guilty of battery on a peace officer based on plaintiff pushing his right shoulder into

1 defendant Culum's chest after defendant Culum placed plaintiff in the holding cell, i.e., the same
2 facts on which dismissed count 2 in Amador County case no. 20-CR-29878 was based. This
3 Court finds that the following claims are not Heck barred based on plaintiff's conviction in rules
4 violation report no. 7003864 because a finding in plaintiff's favor as to these claims would not
5 necessarily imply the invalidity of this disciplinary conviction: 1) defendants Culum, Gamez and
6 Clay used excessive force in violation of the Eighth Amendment when they allegedly applied
7 handcuffs tightly and disregarded plaintiff's request to loosen the handcuffs; 2) defendants Kelly
8 and Pesce used excessive force in violation of the Eighth Amendment when they allegedly
9 attempted to drag plaintiff to his cell; 3) defendant Kelly used excessive force in violation of the
10 Eighth Amendment when he allegedly slammed plaintiff's face to the concrete; 4) defendants
11 Kelly and Pesce used excessive force in violation of the Eighth Amendment when they allegedly
12 used finger and wrist maneuvers to intentionally inflict pain on plaintiff; 5) defendant Culum used
13 excessive force in violation of the Eighth Amendment when he allegedly drove his full body
14 weight down onto plaintiff's ankles and buttocks as hard as he could (this incident allegedly
15 occurred before defendant Culum escorted plaintiff away in a wheelchair and put plaintiff in the
16 holding cage); and 6) defendants Pesce, Kelly, Sergeant, Hurtado and Mott allegedly failed to
17 provide plaintiff with mental health treatment in violation of the Eighth Amendment.

18 Whether plaintiff's claim alleging that defendants Culum and Gamez used excessive force
19 against plaintiff after placing plaintiff in the holding cage is Heck barred requires further
20 discussion. As discussed above, plaintiff was found guilty of battery on defendant Culum based
21 on evidence that as defendant Gamez left to retrieve the scissors, plaintiff aggressively spun to his
22 right and pushed his right shoulder into defendant Culum's chest. In the amended complaint,
23 plaintiff alleges that after defendant Gamez went to retrieve the scissors, defendant Culum yanked
24 plaintiff from the cage, swung plaintiff 180 degrees, slammed plaintiff's face into the wall and
25 smashed the heel of his foot down into plaintiff's right foot, causing plaintiff pain. Plaintiff
26 alleges that defendant Culum then lifted plaintiff up off his feet and slammed plaintiff to the floor,
27 striking plaintiff in the face. Plaintiff alleges that defendant Gamez joined in the assault after she
28 returned.

1 This Court finds that plaintiff's claims alleging that defendant Culum yanked plaintiff out
2 of the holding cage, swung plaintiff 180 degrees, slammed plaintiff into the wall and smashed his
3 heel down on plaintiff's foot, are inconsistent with the findings at the disciplinary hearing that
4 plaintiff aggressively spun to his right and pushed his right shoulder into defendant Culum's
5 chest. These claims of excessive force and plaintiff's disciplinary conviction are premised on
6 different versions of the same event. A finding in plaintiff's favor as to these claims would
7 invalidate plaintiff's disciplinary conviction. Accordingly, these claims of excessive force are
8 Heck barred.

9 Plaintiff alleges that defendant Culum used excessive force against plaintiff after the
10 incident for which plaintiff was convicted of battery. Plaintiff alleges that defendant Culum lifted
11 plaintiff up off his feet and slammed plaintiff to the floor, striking plaintiff in the face. A finding
12 in plaintiff's favor as to these claims would not necessarily invalidate plaintiff's rules violation
13 conviction for battery on defendant Culum. Accordingly, these claims are not Heck barred.
14 Plaintiff's claim alleging that defendant Gamez used excessive force when she joined defendant
15 Culum in assaulting plaintiff is also not Heck barred as a finding in plaintiff's favor as to this
16 claim would not necessarily invalidate plaintiff's rules violation conviction for battery on
17 defendant Culum.

18 Accordingly, this Court recommends granting defendants' motion to dismiss plaintiff's
19 claims alleging that defendant Culum used excessive force when he yanked plaintiff out of the
20 holding cage, swung plaintiff 180 degrees, slammed plaintiff into the wall and smashed his heel
21 down on plaintiff's foot as Heck barred based on plaintiff's disciplinary conviction in rules
22 violation report No. 7003864. The Court recommends denying defendants' motion to dismiss
23 plaintiff's remaining claims as Heck barred based on plaintiff's disciplinary conviction in rules
24 violation report No. 7003864.

25 VI. CONCLUSION

26 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for an extension of time
27 to file his opposition to defendants' motion to dismiss (ECF No. 49) is **granted**; and

28 IT IS HEREBY RECOMMENDED that defendants' motion to dismiss (ECF No. 43) be

1 **granted** as to plaintiff's claim alleging that defendant Culum used excessive force when he
2 yanked plaintiff out of the holding cage, swung plaintiff 180 degrees, slammed plaintiff into the
3 wall and smashed his heel down on plaintiff's foot; defendants' motion to dismiss be **denied** in
4 all other respects.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
10 objections shall be filed and served within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13
14 Dated: June 11, 2025

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16 CHI SOO KIM
17 UNITED STATES MAGISTRATE JUDGE
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